IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 26407 of 2007(R)

OS.99/2001 of MUNSIFF COURT,HARIPAD
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PETITIONERS:
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1. **SUBHADRA @ SULEKHA BEEGUM,**
   D/O K.N.KUNJIKRISHNAN, NOW RESIDING AT PART OF
   PALATHUNGAL HOUSE, VALIYAKUZHI MURI,
   CHEPPAD VILLAGE.

2. **SHAJU BACKER, S/O ABDUL HAMEED BACKER,**
   PROCESS SERVER, DISTRICT COURT, KOLLAM,
   NOW RESIDING AT DO. DO.

3. **SHAJILA, W/O SHAJU BACKER,**
   RESIDING IN DO. DO.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.M.K.SREEGESH

RESPONDENT:

SHAJIL RASHEED, S/O ABDUL RASHEED,
KODUVALLIL VEETTIL, VALIYAKUZHI MURI,
CHEPPAD VILLAGE.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No. 26407 OF 2007

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Dated this the 5th day of September 2007

JUDGMENT

This writ petition is filed to set aside the order in E.A.No.82 of 2007 in E.P.No.11 of 2007 in O.S.No.99 of 2001 pending before the Munsiff's Court, Harippad. The suit is one for recovery of possession and the petitioners have moved an application to stay the delivery of the property for the reason that they have filed appeal against the judgment and decree of the court below and it is pending before the Addl.District Court, Mavelikkara as A.S.No.197 of 2006. It is submitted that there is a delay of 72 days in filing the appeal and therefore the appeal is preferred with a petition to condone the said delay. Since the delay has not been condoned, petitioners have not been in a position to obtain any order of stay from the appellate court and therefore moved an application under Order XXI Rule 26 of the Code of Civil Procedure to the executing court to stay the execution of the decree. The court below has dismissed the same. It is against that decision the present writ petition is preferred.

2. It is seen that in a suit for recovery of possession on the strength of

title, petitioners had approached the first appellate court though with a delay of 72 days for redressal of their grievance, it is natural that the appellate court is not in a position to grant any stay as the delay condonation application is not disposed of. Therefore, it is clear that petitioners have moved the appropriate authority for proper relief and a breathing time has to be given in such type of cases. Therefore, I dispose of the writ petition directing the executing court not to effect delivery of the property for a period of 5 weeks from today.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-